

AMENDMENT TO SENATE AMENDMENT TO H.R. 146
OFFERED BY MR. RADANOVICH OF CALIFORNIA

At the end of the bill, add the following (and amend
the table of contents accordingly):

1 TITLE XVI—CALIFORNIA
2 DROUGHT ALLEVIATION ACT

3 SEC. 16101. SHORT TITLE.

4 This title may be cited as the “California Drought
5 Alleviation Act of 2009”.

6 SEC. 16102. TEMPORARY EXEMPTION DURING DROUGHT
7 EMERGENCIES.

8 (a) EXEMPTION FOR THE OPERATION OF PUMPING
9 PLANTS DURING DROUGHT EMERGENCIES.—Upon the
10 declaration of a drought emergency by the Governor of
11 California, the Secretary of the Interior shall make a writ-
12 ten determination as to the existence of a drought emer-
13 gency for the service areas of the Central Valley Project
14 and the State Water Project. If the Secretary determines
15 that a drought emergency exists for all or portions of the
16 service areas of the Central Valley Project and the State
17 Water Project, the Secretary shall temporarily exempt the
18 operations of the Bureau of Reclamation C.W. “Bill”
19 Jones Pumping Plant and the State of California Harvey

1 O. Banks Pumping Plant from the prohibitions under the
2 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)
3 against take of species listed as endangered species or
4 threatened species or adverse modification of critical habi-
5 tat, until such time as the Secretary determines that the
6 drought emergency conditions are alleviated. For the pur-
7 poses of section 7 of the Endangered Species Act of 1973
8 (16 U.S.C. 1536), the action of pumping water from these
9 plants shall not be considered discretionary.

10 (b) TIME FOR DETERMINATION OF DROUGHT EMER-
11 GENCY.—The Secretary shall make such a determination
12 as to the existence of a drought emergency within the 30-
13 day period beginning on the date of a gubernatorial
14 drought emergency declaration referred to in subsection
15 (a). If the Secretary fails to make such determination
16 within such period with respect to any portion of a service
17 area referred to in subsection (a), the Secretary is deemed
18 to have made a written determination that a drought
19 emergency exists for that portion.

20 (c) REASONABLE AND PRUDENT MEASURES TO PRO-
21 TECT SPECIES.—The Secretary may include in any deter-
22 mination under subsection (a) that a drought emergency
23 exists, reasonable and prudent measures for the protection
24 of an endangered species or its critical habitat. Such rea-
25 sonable and prudent measures, or the failure of the Sec-

1 retary to prescribe such reasonable and prudent measures,
2 shall not impede the ability of the C.W. “Bill” Jones
3 Pumping Plant and the Harvey O. Banks Pumping Plant
4 to supply sufficient water for municipal, industrial, and
5 irrigation uses. The cost of reasonable and prudent meas-
6 ures prescribed by the Secretary under this subsection
7 shall be borne by the United States and shall be non-
8 reimbursable.

9 (d) NO EFFECT ON OTHER PROJECTS.—In carrying
10 out this Act, the Secretary of the Interior and the Sec-
11 retary of Commerce shall not impose additional prescrip-
12 tions under the Endangered Species Act of 1973 (16
13 U.S.C. 1531 et seq.) or the Federal Power Act (16 U.S.C.
14 791a et seq.) on any other water storage or conveyance
15 facility on the San Joaquin River, the Sacramento River,
16 or their tributaries.

17 **SEC. 16103. CONTINUED OPERATION OF CW. “BILL” JONES**
18 **PUMPING PLANT DURING DROUGHT EMER-**
19 **GENCIES.**

20 If the Secretary of the Interior determines that a
21 drought emergency exists for any portion of the Central
22 Valley Project Service Area in California, the Secretary
23 shall direct the Bureau of Reclamation to operate the
24 C.W. “Bill” Jones Pumping Plant at a capacity consistent
25 with the Coordinated Operation Agreement between the

1 Bureau of Reclamation and the California Department of
2 Water Resources, and consistent with otherwise applicable
3 laws (other than prohibitions under the Endangered Spe-
4 cies Act of 1973 from which the operation is exempt under
5 section 16102(a)) and existing water right, until such time
6 as the Secretary determines that the drought emergency
7 conditions are alleviated.

8 **SEC. 16104. DELTA SMELT HATCHERY PROGRAM.**

9 The Secretary of the Interior is authorized to enter,
10 and shall seek to enter, into a cooperative agreement with
11 the State of California to support the establishment of a
12 fish hatchery program to preserve and restore the species
13 *Hypomesus transpacificus* (popularly known as Delta
14 Smelt) in the Sacramento-San Joaquin Delta. The hatch-
15 ery program should be designed to establish a sustainable
16 population of *Hypomesus transpacificus* sufficient to war-
17 rant the species' removal from the lists published under
18 section 4 of the Endangered Species Act of 1973 (16
19 U.S.C. 1533) and the State of California Endangered Spe-
20 cies Act. All *Hypomesus transpacificus* maintained, cul-
21 tured, introduced, or reintroduced under the program es-
22 tablished under this section are deemed to be members
23 of any subspecies or population segment of *Hypomesus*
24 *transpacificus* listed under section 4 of the Endangered
25 Species Act of 1973 (16 U.S.C. 1533) for purposes of de-

- 1 termining whether such subspecies or population segment
- 2 is a threatened species or endangered species under such
- 3 section.

